

House Bill 426

By: Representatives Reece of the 27th, Cooper of the 41st, Stephens of the 164th, Buckner of the 130th, Oliver of the 83rd, and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to offenses against public health and morals, so as to enact the "Georgia Smokefree Air Act of 2005"; to prohibit smoking in certain facilities and areas; to provide for definitions; to provide for exceptions; to provide for posting of signs; to provide for violations, penalties, and state and local government enforcement and administration; to provide for construction; to provide that this prohibition shall be cumulative to other general or local acts, rules, and regulations; to repeal a former prohibition against smoking in public places; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Georgia Smokefree Air Act of 2005."

SECTION 2.

Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to offenses against public health and morals, is amended by adding a new Article 8 to read as follows:

"ARTICLE 8

16-12-180.

As used in this article, the term:

(1) 'Bar' means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including, but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

(2) 'Business' means a sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities

1 where legal, medical, dental, engineering, architectural, or other professional services are
2 delivered.

3 (3) 'Employee' means a person who is employed by an employer in consideration for
4 direct or indirect monetary wages or profit, and a person who volunteers his or her
5 services for a nonprofit entity.

6 (4) 'Employer' means a person, business, partnership, association, corporation, trust, or
7 nonprofit entity that employs the services of one or more individuals.

8 (5) 'Enclosed area' means all space between a floor and ceiling that is enclosed on all
9 sides by solid walls or windows, exclusive of doorways, which extend from the floor to
10 the ceiling.

11 (6) 'Health care facility' means an office or institution providing care or treatment of
12 diseases, whether physical, mental, or emotional, or other medical, physiological, or
13 psychological conditions, including, but not limited to, hospitals, rehabilitation hospitals
14 or other clinics, including weight control clinics, nursing homes, homes for the aging or
15 chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists,
16 physicians, dentists, and all specialists within these professions. This definition shall
17 include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within
18 health care facilities.

19 (7) 'Local governing authority' means a county or municipal corporation of the state.

20 (8) 'Place of employment' means an area under the control of a public or private
21 employer that employees normally frequent during the course of employment, including,
22 but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting
23 rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is
24 not a place of employment unless it is used as a child care, adult day-care, or health care
25 facility.

26 (9) 'Public place' means an enclosed area to which the public is invited or in which the
27 public is permitted, including, but not limited to, banks, bars, educational facilities, health
28 care facilities, laundromats, public transportation facilities, reception areas, restaurants,
29 retail food production and marketing establishments, retail service establishments, retail
30 stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence
31 is not a public place unless it is used as a child care, adult day-care, or health care facility.

32 (10) 'Restaurant' means an eating establishment, including, but not limited to, coffee
33 shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives
34 or offers for sale food to the public, guests, or employees, as well as kitchens and catering
35 facilities in which food is prepared on the premises for serving elsewhere. The term shall
36 include a bar area within the restaurant.

(11) 'Retail tobacco store' means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

(12) 'Service line' means an indoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

(13) 'Shopping mall' means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

(14) 'Smoking' means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.

(15) 'Sports arena' means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

16-12-181.

All enclosed facilities of, including buildings and vehicles owned, leased, or operated by, the State of Georgia, its agencies and authorities, and any political subdivision of the state, including a county, municipal corporation, or local board or authority created by general, local, or special Act of the General Assembly or by ordinance or resolution of the governing body of a county or municipal corporation individually or jointly with other political subdivisions of the state, shall be subject to this article.

16-12-182.

Smoking shall be prohibited in all enclosed public places in this state, including, but not limited to, the following places:

(1) Aquariums, galleries, libraries, and museums;

(2) Areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including, but not limited to, professional offices, banks, laundromats, hotels, and motels;

(3) Bars;

(4) Bingo facilities when a bingo game is in progress;

(5) Convention facilities;

(6) Elevators;

(7) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance;

(8) Health care facilities;

(9) Licensed child care and adult day-care facilities;

(10) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;

(11) Polling places;

(12) Public transportation facilities, including buses and taxicabs, and ticket, boarding, and waiting areas of public transit depots;

(13) Restaurants;

(14) Restrooms, lobbies, reception areas, hallways, and other common use areas;

(15) Retail stores;

(16) Rooms, chambers, and places of meeting or public assembly when a public meeting is in progress;

(17) Service lines;

(18) Shopping malls; and

(19) Sports arenas, including enclosed places in outdoor arenas.

16-12-183.

(a) Smoking shall be prohibited in all enclosed areas within places of employment without exception, including, but not limited to, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

(b) Such prohibition on smoking shall be communicated to all existing employees by July 1, 2005, and to all prospective employees upon their application for employment.

16-12-184.

Smoking shall be prohibited within a reasonable distance of 25 feet, unless such area is a public roadway or is property owned by another individual or entity, outside an enclosed area where smoking is prohibited, so as to ensure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or other means.

16-12-185.

Notwithstanding any other provision of this article, the following areas shall be exempt from the provisions of Code Sections 16-12-182 and 16-12-183:

(1) Private residences, except when used as a licensed child care, adult day-care, or health care facility;

(2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than 20 percent of rooms rented to guests in a hotel or motel may be so designated;

(3) Retail tobacco stores, provided that smoke from such stores does not infiltrate into areas where smoking is prohibited under the provisions of this article;

(4) Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted;

(5) Outdoor areas of places of employment except those covered by the provisions of Code Section 16-12-184;

(6) Smoking areas in international airports, as such areas are designated by the airport operator;

(7) Corporate offices of tobacco manufacturers; and

(8) Private and semiprivate rooms in health care facilities that are occupied by one or more persons, all of whom have written authorization by their treating physician to smoke.

16-12-186.

Notwithstanding any other provision of this article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of subsection (a) of Code Section 16-12-187 is posted.

16-12-187.

(a) 'No Smoking' signs or the international 'No Smoking' symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it shall be clearly and conspicuously posted by the owner, operator, manager, or other person in control in every public place and place of employment where smoking is prohibited by this article.

(b) Every public place and place of employment where smoking is prohibited by this article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

(c) All ashtrays shall be removed from any area where smoking is prohibited by this article by the owner, operator, manager, or other person in control of the area.

16-12-188.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or

customer exercises any rights afforded by this article or attempts to prosecute a violation of this article.

16-12-189.

(a) This article shall be enforced by the appropriate local agency or agencies designated by each local governing authority in this state.

(b) Each local governing authority in this state that issues occupation tax certificates shall give notice of the provisions of this article to all recipients of occupation tax certificates.

(c) Any citizen who desires to register a complaint under this article may initiate enforcement with the agency designated by a local governing authority for enforcement.

(d) The health department and fire department of any local governing authority shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this article.

(e) An owner, manager, operator, or employee of an establishment regulated by this article shall inform persons violating this article of the appropriate provisions of this article.

(f) Any employee or private citizen may bring a legal action to enforce this article.

(g) In addition to any other remedy provided by law, a local governing authority or any person aggrieved by the failure of the owner, operator, or other person in control of a public place or place of employment to comply with the provisions of this article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

16-12-190.

(a) A person who smokes tobacco in any form in an area where smoking is prohibited by the provisions of this article shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than \$50.00 nor more than \$100.00.

(b) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this article shall be guilty of a misdemeanor and, upon conviction, shall be punished as follows:

(1) For a first violation, a fine not exceeding \$100.00;

(2) For a second violation within one year, a fine not exceeding \$200.00; and

(3) For each additional violation within one year, a fine not exceeding \$500.00.

(c) In addition to the fines established by this Code section, violation of this article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(d) Each day on which a violation of this article occurs shall be considered a separate and distinct violation.

1 16-12-191.

2 The Department of Human Resources and the agency designated by each local governing
3 authority in this state shall engage in a continuing program to explain and clarify the
4 purposes and requirements of this article to citizens affected by it and to guide owners,
5 operators, and managers in their compliance with it. The program may include publication
6 of a brochure for affected businesses and individuals explaining the provisions of this
7 article.

8 16-12-192.

9 The agency designated by each local governing authority in this state shall annually request
10 other governmental and educational agencies having facilities within the area of the local
11 government to establish local operating procedures in cooperation and compliance with this
12 article.

13 16-12-193.

14 This article shall not be construed to permit smoking where it is otherwise restricted by
15 other applicable laws.

16 16-12-194.

17 This article shall be cumulative to and shall not prohibit the enactment of any other general
18 or local laws, rules, and regulations of state or local governing authorities or local
19 ordinances prohibiting smoking which are more restrictive than this article or are not in
20 direct conflict with this article.

21 16-12-195.

22 This article shall be liberally construed so as to further its purposes."

23 **SECTION 3.**

24 Said chapter is further amended by repealing Code Section 16-12-2, relating to prohibited
25 smoking in public places. This repeal shall not, however, abate the prosecution of any
26 offense committed prior to July 1, 2005.

27 **SECTION 4.**

28 All laws and parts of laws in conflict with this Act are repealed.